

**Talking Points: President's Residence**  
**Board of Trustee Chair David Brightbill**  
**Friday, March 13, 2015**

Last month, following a series of bat incursions in the President's Residence, I asked the Real Estate Department to identify suitable properties for the Board's consideration as temporary housing for Dr. and Mrs. McDavis' use. An alternative housing arrangement will allow our Facilities staff to undertake an in-depth assessment of needed renovations to address the issues at 29 Park Place.

With this directive, the Real Estate Department worked with local real estate agents to determine if there were suitable residential housing rentals in Athens, which would meet certain criteria to allow the President and First Lady to conduct university responsibilities and business.

The Real Estate Department has identified a property in Athens that may be appropriate. They are currently working out the details of a lease. More information about the property and the details of the lease will be available when these negotiations are concluded.

In addition, the President's current contract requires him to live at 29 Park Place. I will offer a resolution today from the Executive Committee to authorize the Vice President of Finance and Administration to secure alternative housing for the President. This will ensure that we too as a Board are upholding our responsibility to provide suitable housing for the President and First Lady of Ohio University.

Following Dr. and Mrs. McDavis' relocation to a different residence - [who?] in consultation with the Office of Risk Management and Safety - will develop a plan to assess the extent of repairs needed, and to make renovations as appropriate to solve the issue in 29 Park Place. Once the assessment is complete, I ask for Facilities to present the review to the Board.

On behalf of the Board, I also am directing Facilities and the University Planner to incorporate 29 Park Place into the Campus Master Plan so that we may ensure its review is considered as we take a longer vision of our buildings' uses, needs, and space allocations. As part of this additional

# Exhibit 1

Page 2 of 2

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assessment, the Board will then make appropriate authorizations regarding repairs to 29 Park Place to support its determined uses.

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## RESIDENTIAL LEASE AGREEMENT

This Residential Lease Agreement (“Lease”) is made effective March 19, 2015, by and between OHIO UNIVERSITY, an instrumentality of the State of Ohio (“OHIO”), John A. and S. Joyce Wharton (collectively “Lessor”), and the Ohio University Foundation (“Foundation”), who hereby agree as follows:

### **§ 1 LEASE OF PREMISES**

On the terms and subject to the conditions described in this Lease, Lessor hereby leases to OHIO, and OHIO hereby leases from Lessor, the single-family dwelling located at 31 Coventry Lane in the Sycamore Hills Sub-Division in Athens, Ohio, identified in the records of the Athens County Auditor as parcel A029110007001 and consisting of lot number 3956 as shown and described in plat envelope 70-A of the Athens County Recorder’s Office (“Premises”), along with the adjacent unimproved real property identified in the records of the Athens County Auditor as parcels A029110007000, A029110007002, A029110007003, and A029110007004 and consisting of lot numbers 3955, 3957, 3958 and 3959 as shown and described in plat envelope 70-A of the Athens County Recorder’s Office (with the Premises, “the Property”).

### **§ 2 TERM**

The term of this Lease (“Term”) shall commence on March 19, 2015, and shall expire at 11:59 PM on June 30, 2017. If Foundation exercises the Purchase Option described in § 34 and Exhibit B, the Term shall be automatically extended through the last day of the Closing Period as therein defined, upon the terms and conditions provided in this Lease.

### **§ 3 BASE RENT**

During the Term, OHIO shall pay to Lessor base rent in the amount of \$4,318.00 per month (“Base Rent”) due and payable in advance on or before the first day of each calendar month. Base Rent shall be prorated for any month during which OHIO is not entitled to possession of the Property for the entirety of that month. Base Rent and other payments due from OHIO shall be tendered at Ohio Realty; 82 North Court Street; Athens, OH 45701. Payment of Base Rent and any other amounts payable under this Lease shall be made in United States dollars.

### **§ 4 SECURITY DEPOSIT**

No security deposit shall be required under this Lease.

### **§ 5 USE OF PROPERTY**

The Property shall be used as a residence and for entertaining and similar events associated with OHIO’s business. OHIO shall not use the Property in material violation of any law, regulation, order or requirement of the federal, state, or local governments, courts or other lawful authorities having jurisdiction over the Property that now or at any time hereafter may apply to or affect the

Property. OHIO shall obtain, maintain and comply with all permits, licenses and other authorizations required for any use being made of the Property by OHIO.

**§ 6 TAXES**

OHIO shall be responsible for all taxes, assessments, charges and other fees relating to the Property for the Term, including but not limited to real estate property taxes, and to personal property owned by OHIO located within or on the Property. Lessor shall send any real estate property tax invoices and bills to OHIO at the notice addressed listed in § 22. OHIO shall not be responsible for any late fees, charges, interest, or similar assessments arising from Lessor's failure timely to forward such invoices and bills. Lessor shall pay all taxes, assessments, charges and other fees relating to the Property for calendar year 2014 and for calendar year 2015 prior to the commencement of the Term.

Lessor shall reasonably cooperate with OHIO in preparing filings and other documents to secure any tax exemption for the Property or any portion thereof, which shall be prepared and filed at OHIO's cost.

**§ 7 MAINTENANCE, REPAIRS AND CARE OF THE PROPERTY**

A. Lessor's Repairs and Maintenance. Lessor shall be responsible for all maintenance and repairs of and to the Property and the Premises, including but not limited to (i) the exterior, roof, roof drains, gutters and downspouts and structural portions of the Premises, including the floor slab, bearing walls and foundations; (ii) all systems, including electrical, HVAC, gas, mechanical, plumbing, water and sewer, wherever located on the Property or the Premises; (iii) the parking area and driveway on the Property, including but not limited to sweeping, landscaping maintenance and snow/ice removal; and (iv) usual residential appliances located on the Property. In order to perform inspections and to make such repairs, Lessor shall have the right to enter the Premises after giving 24 hours' advance notice to OHIO. Lessor shall be entitled to invoice OHIO for actual costs it incurs in providing the maintenance and repair services described in this section that are requested by OHIO.

B. OHIO's Reasonable Care and Use. OHIO shall use the Property with reasonable care and diligence so that the Property remains in good condition, ordinary wear and tear and damage by fire or other casualty excepted.

**§ 8 ALTERATIONS**

A. Alterations and Redecoration. OHIO may make alterations, changes, improvements and installations to the Premises and the Property at OHIO's cost, provided that OHIO first obtains Lessor's consent, which shall not be unreasonably withheld, conditioned or delayed. Any equipment installed on the roof of the Premises shall be mounted on a non-penetrating skid or otherwise installed so as not to damage the roof. OHIO shall repair any damage caused by any alterations, changes or installations authorized under this subsection. Notwithstanding the foregoing, OHIO may perform nonstructural interior redecoration of the Premises without first seeking Lessor's approval.

B. Network Connections. OHIO may perform such work, at its cost, as is necessary to install and maintain appropriate connections at the Premises to OHIO's broadband communications network, which work may include alterations and installations inside and outside the Premises and on the Property. Before beginning such installation work, OHIO shall obtain Lessor's consent, which shall not be unreasonably withheld, conditioned or delayed. Lessor shall reasonably cooperate with OHIO in securing any permits, permissions and approvals necessary to complete the work described in this subsection. OHIO shall repair any damage caused by any alternations, changes or installations authorized under this subsection.

## § 9 UTILITIES

OHIO shall pay for all utilities and related fees and charges associated with its use and occupancy of the Property, including but not limited to water, sewer, trash, recycling, electricity, gas, fire alarm system and monitoring, fire protection sprinkler system, security system, communications networks and any other utilities supplied to the Property. This section shall not be interpreted to require OHIO to install or maintain a fire alarm, security system or any communications network.

## § 10 HOLDING OVER

If OHIO remains in possession of the Premises and/or all or any portion of the Property after expiration of the Term, the Term shall be converted automatically to a month-to-month tenancy subject to all other terms and conditions of this Lease. During such period of month-to-month tenancy, this Lease may be terminated by either party for any or no reason upon 30 days' written notice to the other party.

## § 11 QUIET ENJOYMENT

Provided that OHIO observes and performs the covenants and agreements under this Lease, OHIO shall, at all times during the Term, peacefully and quietly have and enjoy possession of the Property without encumbrance or hindrance from Lessor.

## § 12 DAMAGE OR DESTRUCTION TO PROPERTY

A. Repair of Damage to Property by Lessor. If the Premises should be partially or totally damaged by fire or other casualty, then, subject to the terms of this section, Lessor shall promptly commence to rebuild or repair such damage or destruction. Lessor shall complete such repairs or restorations within 60 days after the date of such damage or destruction. Following any such damage or destruction, Base Rent due from OHIO shall be abated during the period of performance of any such repair or restoration in such proportion to the area of the Premises of which OHIO is deprived as a result of such damage or destruction or the repair necessitated thereby bears to the total floor area of the Premises. If the Premises is damaged to an immaterial degree, as agreed to by OHIO and Lessor, Lessor shall cause the Premises to be repaired and restored as soon as reasonably possible after the date of such damage; provided that Base Rent shall not be reduced or abated. If Lessor undertakes the repairs and restorations described in this

subsection, such work shall be performed with due diligence until the Premises is restored to substantially the same condition as it was in prior to such damage or destruction.

B. OHIO's Option to Terminate. If the Premises should be partially or totally damaged or destroyed such that Lessor, in Lessor's reasonable estimation, will be unable to complete such repair or restoration within 60 days after the date of such damage or destruction, Lessor shall so notify OHIO within 15 days of the occurrence of such damage or destruction, and OHIO may, at its option, terminate this Lease upon delivery of written notice to Lessor within 15 days of Lessor's notice. In that event, this Lease shall expire and all interest of OHIO in the Property shall terminate as of the date of such damage as if such date had been originally fixed for expiration of the Term.

C. Lessor's Option to Terminate. Notwithstanding other provisions of this section, Lessor shall have the option to elect not to rebuild and/or restore the Premises in the event of fire or casualty that substantially or totally damages or destroys the Premises, and Lessor may terminate this Lease by delivery of written notice of termination to OHIO within 30 days after the date of damage. If Lessor elects to terminate the Lease as provided for in this subsection, the Lease shall terminate effective as of the date of casualty. In that event, OHIO shall vacate the Premises as quickly as is reasonably possible, except that OHIO shall be entitled to occupy the Premises without liability to Lessor for as long as is reasonably necessary to salvage or remove therefrom its personal property and equipment.

## § 13 CONDEMNATION

If all or a material part of the Property is taken by any condemning authority under the power of eminent domain or by any purchase or other acquisition in lieu thereof, such that in Lessor's or OHIO's reasonable estimation the taking deprives the remaining portion of the Property of its previously intended purpose and economic use, then either party may terminate this Lease as of the date possession is required by the condemning authority. In the event of any such termination, Base Rent payable by OHIO shall be apportioned as of the termination date. Lessor shall be entitled to receive the entire appropriation award or consideration paid by the condemning authority.

## § 14 DEFAULT AND TERMINATION

A. OHIO Default. Each of the following shall be deemed a default by OHIO under this Lease: (i) failure by OHIO to pay Base Rent in full to Lessor within ten days after OHIO receives written notice from Lessor to that effect; (ii) failure by OHIO to pay Base Rent in full on the date such payment is due if at any time during the previous 12-month period OHIO already has received two notices of its failure to pay Base Rent; and (iii) failure by OHIO to perform or observe any other obligation or condition to be performed or observed by OHIO under this Lease and to correct such default within 30 days after Lessor gives OHIO written notice of such failure (or, in the event of a default that cannot reasonably be corrected within 30 days, failure to begin to correct such default within 30 days and to continue to diligently prosecute the correction to completion). Immediately upon the occurrence of any event of default, unless the default has been cured with the written consent of Lessor or expressly waived

by Lessor in writing, Lessor may at its option either (i) continue this Lease notwithstanding the default, without waiving any remedies at law or in equity that Lessor may have; or (ii) terminate this Lease.

B. Lessor Default. In the event of a default by Lessor in the prompt and full performance of any provision of this Lease, and failure to Lessor to cure such default within 30 days after OHIO gives Lessor written notice of such failure (or, in the event of a default that cannot reasonably be corrected within 30 days, failure to begin to correct such default within 30 days and to continue to diligently prosecute the correction to completion), in addition to other rights that OHIO may have for money damages against Lessor, at OHIO's option, Ohio may either (i) pay any sum necessary to perform any of Lessor's obligations and deduct the cost thereof from Base Rent thereafter to become due; and/or (ii) sue for injunctive relief, specific performance, and/or damages.

## § 15 INSURANCE

A. Casualty Insurance. OHIO will maintain in full force and effect during the Term general liability insurance, including contractual liability coverage, naming Lessor as a loss payee, against any and all claims and demands for damage to property or injury to persons or loss of life arising out of or related to the use of or resulting from any accident occurring in, upon or about the Premises, with a combined single limit of not less than \$5,000,000.

B. Workers' Compensation Insurance. OHIO will maintain in full force and effect during the Term any legally required workers' compensation insurance covering OHIO's employees that perform work on the Property. OHIO's obligation under this subsection may be satisfied by maintenance of a self-insurance program that complies with Ohio law.

C. Property Insurance. At all times during the Term, Lessor shall maintain insurance covering the Property including, without limitation, all improvements now located on the Property, against loss and damage by fire, vandalism, malicious mischief, windstorm, hail, smoke, explosion, riot, civil commotion, vehicles, aircraft, flood, or earthquake.

D. Certificates of Insurance. The parties shall provide certificates of insurance required under this Lease upon request of the other party.

E. Lessor Remedies. Lessor shall not be liable for any loss, damage, or injury to any person or property arising from failure of OHIO to maintain the Premises and the Property in a safe condition. OHIO agrees to be responsible for any loss or claims incurred by Lessor that are directly due to the negligence or unintended consequences of OHIO's use or agents of OHIO's use of the Premises and the Property. OHIO accepts responsibility for the losses that may or are caused by OHIO's use or its agents use of the Premises and the Property.

## § 16 NO BROKER

Each party represents and warrants to the other that no brokerage commission is due to any agent relating to this Lease.

**§ 17 ESTOPPEL CERTIFICATES**

Lessor and OHIO shall from time to time during the Term promptly following the request of the other, execute and delivery to the other a statement certifying, if so, that this Lease is in full force and effect, the date through which Base Rent has been paid, and any other factual matter reasonably requested by the other.

**§ 18 REPRESENTATIONS AND WARRANTIES**

Lessor represents and warrants that it has complete legal authority to enter into this Lease and to lease the Premises and Property as described herein. Lessor further represents and warrants that as of the effective date of this Lease there is no lien, mortgage, lease, or other legal interest pertaining to the Premises or Property that would impair the legal rights granted herein to OHIO or excuse Lessor's performance of its obligations as described herein.

**§ 19 FURNISHINGS**

OHIO hereby purchases all furnishings located in or on the Premises and the Property as of the effective date of this Lease on an as-is basis, which furnishings are described in Exhibit A. As consideration for this purchase, OHIO shall pay Lessor \$75,000.00 within five days of the effective date of this Lease.

**§ 20 ASSIGNMENT**

OHIO shall have the right to assign the Lease to the Ohio University Foundation or to Inn-Ohio of Athens, Inc., without the consent or approval of Lessor. OHIO shall give prompt written notice of such assignment to Lessor. OHIO shall have the right to assign the Lease to any other entity upon written notice to and consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed.

**§ 21 CUMULATIVE RIGHTS AND REMEDIES**

Each right or remedy of Lessor, OHIO and Foundation under this Lease or now or hereafter available to the parties by statute, at law, in equity or otherwise shall be cumulative and concurrent and shall be in addition to every other such right or remedy, and neither the existence, availability, nor exercise of any one or more of such rights or remedies shall preclude or otherwise affect the simultaneous or later exercise by Lessor, OHIO or Foundation of any or all such other rights or remedies.

**§ 22 NOTICES**

All notices and other communications required to be given to either party under this Lease shall be in writing and shall be deemed given when delivered personally, three days after having been mailed by certified mail, or one day after having been sent by overnight courier to that party at the address below:

To OHIO and Foundation:

Ohio University  
Director of Real Estate  
160 W. Union Street, Room 152  
Athens, Ohio 45701

With a copy to:

Ohio University  
Office of Legal Affairs  
160 W. Union Street, Room 150  
Athens, OH 45701

To Lessor:

Ohio Realty; 82 N. Court Street; Athens, OH 45701

**§ 23 FORCE MAJEURE**

If Lessor, OHIO or Foundation shall be delayed or hindered or prevented in the performance of any obligations required under the Lease by reason of strike, lockout, inability to procure labor or materials, failure of power, fire, or acts of God, terrorism, restrictive governmental laws or regulations, riots, insurrection, war or any other reason not within the reasonable control of Lessor, OHIO or Foundation (“Force Majeure”), the performance of such obligations shall be excused for a period of such delay and the period for the performance of any such act shall be extended for a period equivalent to the period of any such delay. Notwithstanding the foregoing, this section shall not be applicable with respect to the obligations imposed on OHIO with regard to payment of Base Rent and other charges to be paid by OHIO pursuant to this Lease.

**§ 24 SURVIVAL OF OBLIGATIONS**

No termination of this Lease and no repossession of the Property or any part thereof shall relieve OHIO of its liabilities and obligations hereunder, all of which shall survive such termination or repossession.

**§ 25 MEMORANDUM OF LEASE**

This Lease shall not be recorded; however, at the request of either Lessor or OHIO, the other party shall execute, acknowledge, and deliver a memorandum of lease for purposes of giving public notice of the rights and obligations of Lessor and OHIO under this Lease.

**§ 26 NON-WAIVER**

No failure by Lessor, OHIO or Foundation to exercise any option hereunder or to enforce its rights or seek its remedies upon any default, and no acceptance by Lessor of any rent accruing before or after any default, shall effect or constitute a waiver of Lessor's, OHIO's or Foundation's rights to exercise that option, enforce that right, or seek that remedy with respect to that default or any prior or subsequent default.

**§ 27 NO THIRD PARTY BENEFIT**

This Lease is intended for the benefit of Lessor, OHIO and the Foundation and their permitted successors and assigns, and nothing contained in this Lease shall be construed as creating any rights or benefits in or to any third party.

**§ 28 SEVERABILITY**

The intention of the parties to this lease is to comply fully with all laws governing leases, and this lease shall be construed consistently with all such laws to the extent possible. If and to the extent that any court of competent jurisdiction is unable to so construe part or all of any provision of this lease, and holds that part or all of that provision to be invalid, such invalidity shall not affect the balance of that provision or the remaining provisions of this lease, which shall remain in full force and effect.

**§ 29 GOVERNING LAW**

This Lease has been negotiated and executed in the State of Ohio and relates to real property located in Athens County in the State of Ohio. All questions concerning the validity or intention of this Lease shall be resolved under the laws of the State of Ohio.

**§ 30 EXHIBITS**

All exhibits attached to this Lease are incorporated herein by reference.

**§ 31 COMPLETE AGREEMENT**

This document (with its exhibits, which are hereby incorporated herein by reference) contains the entire lease between the parties and supersedes any prior discussions, representations, warranties, or agreements between them respecting the subject matter. No changes, alterations, modifications, additions, or qualifications to this Lease shall be made or be binding unless made in writing and signed by each of the parties.

**§ 32 COUNTERPARTS**

This Lease may be executed in several counterparts and each executed counterpart shall be considered an original of this Lease.

**§ 33 SUCCESSORS IN INTEREST**

Except as otherwise provided in this Lease, all provisions of this agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective heirs, personal representatives, successors, and assigns of each party to this Lease.

**§ 34 PURCHASE OPTION**

The Foundation shall have the right and option to purchase the Property, including the Premises, upon the terms described in Exhibit B.

*[Faint, illegible text]*

*[Faint signature]*

BARBARA K. MASH  
Notary Public  
in and for the State of Ohio  
My Commission Expires  
10/2018



*[Faint signature]*

BARBARA K. MASH  
Notary Public  
in and for the State of Ohio  
My Commission Expires  
10/2018



IN WITNESS WHEREOF, Lessor, OHIO and Foundation have caused this lease to be executed and delivered by its duly authorized representative as of the date first set forth above.

**OHIO:**

**FOUNDATION:**

**OHIO UNIVERSITY**, an instrumentality of the State of Ohio

**THE OHIO UNIVERSITY FOUNDATION**, a non-profit Ohio corporation

By: *Stephen T. Golding*

By: *J. Bryan Benchoff*

Name: STEPHEN T. GOLDING

Name: J. BRYAN BENCHOFF

Title: Vice President Finance & Administration

Title: OHIO UNIVERSITY FOUNDATION

STATE OF OHIO  
ATHENS COUNTY

This document was acknowledged before me on March 19, 2015, by Stephen T. Golding, the Vice President for Finance and Administration and Chief Financial Officer of Ohio University, on behalf of Ohio University.



**BARBARA K MASH**  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
September 10, 2018

*Barbara K. Mash*  
Notary Public

STATE OF OHIO  
ATHENS COUNTY

This document was acknowledged before me on March 19, 2015, by J. Bryan Benchoff, the President and Chief Executive Officer of The Ohio University Foundation, on behalf of the Ohio University Foundation.



**BARBARA K MASH**  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
September 10, 2018

*Barbara K. Mash*  
Notary Public

**LESSOR:**

**JOHN A. and S. JOYCE WHARTON**

By: 

Name: John A. Wharton

By: 

Name: S. Joyce Wharton

STATE OF OHIO  
ATHENS COUNTY

This document was acknowledged before me on March \_\_, 2015, by John A. Wharton and S. Joyce Wharton.



**Laura Denise Davis**  
Notary Public  
State of Ohio, Athens County  
Commission Expires: 06/09/2015

  
Notary Public

This lease was prepared by Ohio University; Office of Legal Affairs; 160 W. Union St. Room 150; Athens, OH 45701

EXHIBIT A

INVENTORY OF FURNISHINGS



**EXHIBIT B****PURCHASE OPTION**

1. **Option to Purchase.** Upon the terms and conditions described herein, Foundation shall have the right and option to purchase the Premises and the Property (“Purchase Option”), which shall be exercisable at any time during the Term upon written notice to Lessor, except that the Purchase Option may not be exercised later than April 28, 2017.
2. **Purchase Price.** The purchase price for the Purchase Option shall be One Million One Hundred and Fifty Thousand Dollars (\$1,150,000.00) (“Purchase Price”), which shall consist of One Million Dollars (\$1,000,000.00) for the Premises and One Hundred and Fifty Thousand Dollars (\$150,000.00) for the four unimproved parcels within the Property.
3. **Closing.** The closing and consummation of the purchase and sale of the Property (“Closing”) shall occur within 730 days of the exercise of the Purchase Option (“Closing Period”).
4. **Conditions Precedent to Closing.** The right and obligation of Foundation to purchase the Premises and the Property following exercise of this option shall be subject to and conditioned upon the following unless waived in writing by Foundation in its sole discretion: (i) approval by Foundation’s Board of Trustees and/or approval by the governing board of an entity to which this Purchase Option may be assigned (“Approval Contingency”); (ii) procurement of a title commitment, title insurance policy and survey that reflect no uncured title defects at or before Closing; (iii) successful completion, in Foundation’s sole discretion, of reasonable physical inspections of the Property, including but not limited to Phase I environmental report, geotechnical borings, mechanical systems inspections, structural inspections and roof inspections; and (iv) affirmation by Lessor that Lessor’s covenants, representations and warranties as described in § 9 are true and correct in all material respects at Closing (items (ii), (iii) and (iv) collectively “Buyer Contingencies”). All of the Buyer Contingencies and Approval Contingency shall be satisfied within 30 days after exercise of the Purchase Option. Foundation shall have the ability to satisfy contingencies during and throughout the Term.
5. **Earnest Money.** If Foundation exercises the Purchase Option, it shall deposit with a mutually agreeable escrow agent or pay to Lessor, at Foundation’s discretion, the sum of \$250,000.00 (“Earnest Money”). Such deposit or payment shall be made when Lessor receives notice that the Purchase Option has been exercised. At Closing, the Earnest Money shall be credited against the Purchase Price and shall reduce the Purchase Price defined in section 1 by \$250,000.00. If Foundation exercises the Purchase Option but the parties fail to complete the Closing because of failure to satisfy any of the Buyer Contingencies or Lessor’s default or delay under this Purchase Option, then the Earnest Money shall be returned promptly to Foundation. The parties shall negotiate an escrow agreement to effectuate the provisions of this section, which agreement shall be consistent with the terms of the Purchase Option and the Lease.
6. **Damage or Destruction of Property.** Risk of physical loss to the Property during the Closing Period shall be borne in accordance with the Lease, provided that if any part of the

Property be substantially damaged or destroyed during the Closing Period, Foundation may (i) proceed with the transaction and be entitled to all insurance proceeds, if any, payable to Lessor under all policies covering the Property; or (ii) rescind its exercise of the Purchase Option by giving written notice to Lessor within 30 days after such damage or destruction. Failure to give such notice shall constitute an election to proceed with the transaction.

7. Condemnation. If during the Closing Period any condemnation or eminent domain proceedings are initiated that might result in the taking of any part of the Property that materially affects Foundation's use thereof, Foundation may elect to rescind its exercise of the Purchase Option by giving written notice of its election to Lessor within 14 days after receiving notice of such taking. If Foundation does not give such written notice within such 14 day period, the transaction shall be consummated on the date set for closing at the Purchase Price, and Lessor shall assign to Foundation Lessor's portion of any condemnation award.

8. Closing. At Closing, Lessor shall convey to Foundation good and marketable fee simple title to the Property free and clear of all liens, defects, encumbrances, conditions, exceptions, restrictions or other matters affecting title.

9. Covenants, Representations and Warranties of Lessor. Lessor covenants, represents and warrants to OHIO and Foundation as follows:

A. During the Closing Period, Lessor will not (i) enter into any contract or agreement pertaining to the Property that would survive the end of the Closing Period and be binding upon Foundation; (ii) cancel or permit cancellation or any hazard or liability insurance carried with respect to the Property; or (iii) subject the Property to any additional liens, encumbrances, covenants, conditions, easements, rights of way or similar matters.

B. Lessor now has, and at closing will have, full right and authority to execute and deliver this Purchase Option, and all documents and instruments required of it for the performance of this Purchase Option.

C. This Purchase Option has been duly authorized and executed on behalf of Lessor and constitutes the legal, valid and binding agreement and obligation of the Lessor, enforceable against the Lessor in accordance with its terms.

D. As of Closing, Lessor shall not be in default under any evidence of indebtedness, contract, license, understanding or other agreement where the liability thereunder might materially, adversely affect the ability of Lessor to perform its obligations under this Purchase Option.

E. Lessor has no knowledge of any actual pending or threatened litigation or proceeding against Lessor with respect to the Property or against the Property.

F. Lessor has good and marketable fee simple title to the Property and at the Closing would convey the Property to Foundation free and clear of all liens, defects, encumbrances, conditions, exceptions, restrictions or other matters affecting title.

G. No person, corporation, or other entity has any option or rights of purchase to acquire all or any portion of the Property.

H. Neither Lessor nor, to the best of Lessor's knowledge, any previous owner, tenant, licensee or user of the Property, or any other person or entity, has ever (i) used, generated, processed, stored, disposed of, released or discharged any Hazardous Substance on, under or about the Property; or (ii) transported Hazardous Substances to, from or across the Property. To the best of Lessor's knowledge, there are no Hazardous Substances located on the Property, and the Property is in compliance with all applicable laws, regulations and ordinances. There are no underground storage tanks on the Property and, to the best of Lessor's knowledge, there have never been any underground storage tanks on the Property. As used in this subsection, "Hazardous Substance" refers to all hazardous or toxic substances, wastes or materials, pollutants or contaminants (including asbestos), or any other similar substances or materials that are regulated by federal, state or local law or regulation, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Super Fund Amendments and Reauthorization Act of 1986, the Resource, Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984, as amended. No portion of the Property is located in or comprises "wetlands" as defined in 33 C.F.R. §328.1(b). No portion of the Property is located in the regulatory floodway or the floodplain as designated by the Federal Emergency Management Agency.

10. Foundation's Costs. Foundation shall pay all costs and expenses related to title insurance, conveyance and recording fees, escrow fees and other commonly incurred closing costs. In consideration of the fact that real estate taxes are paid by OHIO pursuant to the Lease, there shall be no proration of the same at the time of Closing.

11. Termination. The term of this Purchase Option shall commence upon the full execution and delivery of the Lease and shall, except as provided below, survive any sale of the Property and/or the Premises by Lessor to any third-party. The Purchase Option shall terminate upon, and only upon, any of the following occurring:

A. The termination of the Lease for any reason.

B. If Foundation exercises the Purchase Option but fails to complete Closing for any reason other than failure of satisfaction of a Buyer Contingency or Lessor's default or delay.

C. The Purchase Option is not exercised on or before April 28, 2017.

12. Default.

A. Lessor Default. Should Lessor breach any of its covenants, conditions, representations or warranties contained in this Purchase Option, or should Lessor refuse or fail to convey the Property as herein provided for any reason other than a default solely by Foundation, Foundation may, upon ten days written notice to Lessor, if such breach or failure is not cured within such ten day period, in addition to all remedies available to Foundation, either rescind its election to purchase the Property or enforce specific performance.

B. Foundation Default. If after exercising the Purchase Option Foundation should fail to proceed to Closing for any reason other than a default solely by Lessor, Lessor may, upon ten days written notice to Foundation, if such breach is not cured within such ten day period, terminate Foundation's right to purchase the Property as provided for herein, without further liability on Lessor's part, and Lessor shall have the right to disbursement of the Earnest Money.

13. Assignment. Foundation shall have the right to assign the Purchase Option to Inn-Ohio of Athens, Inc., without the consent or approval of Lessor. Foundation shall give prompt written notice of such assignment to Lessor. Foundation shall have the right to assign the Purchase Option to any other entity upon written notice to and consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed.

### Donor Contact Report Summary

Notwithstanding the donor profile exception to the disclosure requirements of the Ohio Public Records Law, the Ohio University Foundation has chosen to disclose the attached donor contact report.

This digital record was created on March 23, 2015. It purports to describe conversations that occurred on the following dates.

- February 27, 2015 Mr. Wharton made an unscheduled visit to the office of Director of Athletics Jim Schaus and stated his intent to pay off his previous pledge and to make a new gift.
- Mr. Schaus telephoned Ryan White, Senior Associate Athletic Director for Development, and informed him of the conversation with Mr. Wharton. (Neither Mr. Schaus nor Mr. White were involved in any way with the negotiation of the real estate transaction.)
- March 11, 2015 Mr. White stopped by Mr. Wharton's office.
- March 14, 2015 Mr. White discussed the status of the real estate transaction with President McDavis during a pre-game event at the MAC women's basketball tournament.
- March 19, 2015 Bryan Benchoff, President and CEO of the Ohio University Foundation, sent an email to his staff informing them that the lease agreement for 31 Coventry Lane would be signed on March 19.
- March 23, 2015 Following standard procedure in the Office of Advancement, Mr. White created the donor contact report.
- March 26, 2015 While compiling documents in connection with a public records request, Mr. Benchoff discovered the March 23, 2015 donor contact report. He immediately informed General Counsel John Biancamano and Vice President for Finance and Administration Steve Golding.

**Attached is the Full Content of the donor contact report as well as screen shots of the report as it appears in the database.**



## **Full Content:**

-John is in the process of selling his house to Ohio University

-As a part of the settlement, John plans to pay off his Walter Fieldhouse pledge and make a \$100k commitment to the Academic Center

-White stopped by John's office to check on the status of house. John was hopeful that everything would be signed by Friday, March 13.

-I talked to President McDavis at length (during the pregame event at the MAC basketball tournament) about some of the issues they were having, but he was hopeful that everything would be resolved soon.

-Several days later Bryan Benchoff sent an email to the Advancement staff notifying "the University and Foundation will announce that it has entered into a lease-to-buy contract with John and Joyce Wharton that would have the OU Foundation acquire their house and surrounding property at 31 Coventry Lane in the Sycamore Hills Sub-Division in Athens, Ohio to serve as the presidential residence"

-John said he would be in touch to sign the paperwork once everything got sorted out.



**OHIO**  
UNIVERSITY

Office of University Advancement  
Wharton Contact Report / March 2015

**Contact Report**

Actions Print

**John and Joyce Wharton (Prospect #4005)**

**Contact Type** Visit (Mar 11, 2015)  
**Purpose** Gift Negotiation  
**Prospect Type** Alumni

**Contact Report**

Save New Actions Help

|                      |  |  |            |
|----------------------|--|--|------------|
| <b>Report ID</b>     | 165479   | <b>Date*</b>                           | 03/11/2015 |
| <b>Contacted ID</b>  | 57980  | Mr. John A. Wharton                    |            |
|                      | <input checked="" type="checkbox"/> <b>Joint</b>   |  |            |
| <b>2nd ID</b>        | 291224   | Mrs. Joyce Wharton                     |            |
| <b>Contact Type*</b> | V  | Visit                                  |            |
| <b>Purpose*</b>      | N  | Gift Negotiation                       |            |
| <b>Unit</b>          | ATH  | Athletics                              |            |
| <b>Author*</b>       | 387918   | Mr. Ryan White                         |            |
| <b>Description*</b>  | Schaus notified White of possible gift to the Academic Center  |  |            |
| <b>Text</b>          | <p>-John is in the process of selling his house to Ohio University<br/>                 -As a part of the settlement, John plans to pay off his Walter Fieldhouse pledge and make a \$100k commitment to the Academic Center<br/>                 -White stopped by John's office to check on the status of house. John was hopeful that everything would be signed by Friday, March 13.<br/>                 -I talked to President McDavis at length (during the pregame event at the MAC basketball tournament) about some of the issues they were having, but he was hopeful that everything would be resolved soon.<br/>                 -Several days later Bryan Benchoff sent an email to the Advancement staff notifying the University and Foundation will announce that it has entered into a lease-to-buy.</p> |  |            |
| <b>Program</b>       |  |  |            |
| <b>Initiated By</b>  |  |  |            |
| <b>Outcome</b>       |  |  |            |
| <b>Attitude</b>      |  |  |            |
| <b>Prospect ID</b>   | 4005   | John and Joyce Wharton - Prospect Pool |            |
| <b>Proposal ID</b>   |  |  |            |
| <b>Name*</b>         | Mr. John A. Wharton  |  |            |
| <b>Sort Name*</b>    | WHARTON,JOHN A.  |  |            |
| <b>Title/Addr</b>    |  |  |            |



**Contact Report** Actions Print

**John and Joyce Wharton (Prospect #4005)**

**Contact Type** Visit (Mar 11, 2015)  
**Purpose** Gift Negotiation  
**Prospect Type** Alumni

**Contact Report** Save New Actions Help

|                      |   |  |            |                             |
|----------------------|---|--|------------|-----------------------------|
| <b>Report ID</b>     | 165479  | <b>Date*</b>                                     | 03/11/2015 | <a href="#">Sort</a>        |
| <b>Contacted ID</b>  | 57980   | <input type="text" value="Mr. John A. Wharton"/> |            | <a href="#">Filter</a>      |
|                      | <input checked="" type="checkbox"/> <b>Joint</b>                                |  |            | <a href="#">Paste</a>       |
| <b>2nd ID</b>        | 291224  | <input type="text" value="Mrs. Joyce Wharton"/>  |            | <a href="#">Audit Info</a>  |
| <b>Contact Type*</b> | V   | Visit  |            | <a href="#">Reports</a>     |
| <b>Purpose*</b>      | N   | Gift Negotiation                                 |            | <a href="#">Print Form</a>  |
| <b>Unit</b>          | ATH   |  |            | <a href="#">Export Form</a> |
| <b>Author*</b>       | 3879  |  |            | <a href="#">Delete</a>      |
| <b>Description*</b>  | Scha  |  |            |                             |
| <b>Text</b>          | <p>-John<br/>-As a<br/>make<br/>-Whit<br/>that<br/>-I tal<br/>bask<br/>hope</p> |  |            |                             |

**The page at https://aslvpn.oit.ohio.edu:11002 says:**

Operator: whiter - Ryan White  
Owner: CO  
Added: Mar 23,2015 4:49:49 PM  
Modified: Mar 23,2015 4:49:49 PM

[OK](#)

-Several days later Bryan Benchoff sent an email to the Advancement staff notifying "the University and Foundation will announce that it has entered into a lease-to-buy

|                     |  |
|---------------------|--|
| <b>Program</b>      | <input type="text"/>   |
| <b>Initiated By</b> | <input type="text"/>   |
| <b>Outcome</b>      | <input type="text"/>   |
| <b>Attitude</b>     | <input type="text"/>   |
| <b>Prospect ID</b>  | 4005 <input type="text" value="John and Joyce Wharton - Prospect Pool"/> |
| <b>Proposal ID</b>  | <input type="text"/>   |
| <b>Name*</b>        | Mr. John A. Wharton  |
| <b>Sort Name*</b>   | WHARTON,JOHN A.  |
| <b>Title/Addr</b>   | <input type="text"/>   |

# |

jwharton@ohio-realty.com

**From:** jwharton@ohio-realty.com  
**Sent:** Monday, April 17, 2017 12:57 PM  
**To:** 'Averion, David'  
**Subject:** FW: Message from OR\_bizhubC280  
**Attachments:** SOR\_bizhubC17041710320.pdf

David,

Per your request, I have attached several documents to assist you and all interested parties with a further understanding and explanation of the invoices in question dated January 31, 2017, February 28, 2017 and March 29, 2017.

When Ohio University entered into the lease/ purchase contract over 2 years ago, I like to think part of their willingness to consider this residence was among other things, the condition of the property's interior and exterior. Since the property is over 25 years old, the condition is a result of continual maintenance which would not always be apparent to everyone including Ohio University's employees and staff. While Ohio University chose to not exercise their option to purchase 31 Coventry Lane, I am sure Ohio expected the condition to be maintained for the benefit of Dr. and Mrs. McDavis for their enjoyment and safety. I also expected the same maintenance that had occurred for the prior 25 years to maintain the value of my investment. Prior to entering the lease/ purchase contract, various employees of Ohio inspected the property including but not limited to Chief Powers, one of his primary concerns was providing security for President and Mrs. McDavis. The existence of a wrought iron seven foot tall fence around the property that included a gate to enter was certainly a positive quality. Ohio even went through the expense of replacing the button to enter with a keypad which required a code to enter. Whereas my primary concern was to keep out the deer and therefore preventing the resulting destruction to my landscaping, apparently Ohio wanted to prevent uninvited human visitors as well.

Near the end of July 2016 or the beginning of August, there was an electrical event; a surge, lightning strike or some other event that occurred at the residence which resulted in several electrical issues (please see attached emails from Tamara Ervin and Mrs. McDavis). Additionally, prior to that we had to have the opening mechanism replaced on the gate and the new system had a sensor which prevented the gate from closing if anything was within the "sensor area", similar to a garage door. This often caused a problem for some of the visitors and therefore the Mrs. McDavis requested a sign be installed on both gates instructing everyone to leave the gates open all day. WE had the signs made and installed accordingly. Unfortunately, those same deer that I wanted to keep out invaded the property and devoured many of my shrubs and damaged the landscaping. The invoice you received dated March 29, 2017 was to replace and correct said damage. It would not have been prudent to make any repairs/ replacement until the property was secured (gate left closed) and plants were available which was after President and Mrs. McDavis moved.

Additionally when I was inspecting the property late last summer, I discovered that I had a number of dead Ash trees which had branches falling off. Because of the location they posed a danger of falling on the house, fence Arbor or worse yet an individual! I contacted someone who I have utilized in the past, D&J Tree service, to discuss the removal of any Ash trees prior to them causing any injury or damage which could result by falling on an individual or the property. I had utilized this contractor previously at 31 Coventry Lane to remove a couple of large Maple trees that we were concerned would fall on our house even though they were healthy, unlike the Ash trees. I would like to think any responsible person would view this as responsible and not wait for them to fall on the property resulting in an injury or expensive repairs. I received an estimate from D&J Tree Trimming on 9/5/16 which I have attached for your review. This estimate was for 58 Ash trees and totaled \$30,598.50. I was uncomfortable with the necessity of the removal of all the trees identified and the expense associated with the same and therefore I asked him to meet me again to review the estimate. We were able to identify a number of trees that we could eliminate from the removal list as they did not pose any danger to our property identified earlier or potential injury to a resident or guest. This resulted in reducing the expense

# Exhibit 4

Page 2 of 2

to \$13,187.28 instead of \$30,548.50. This work was to be completed, if possible, during the week in December that Dr. & Mrs. McDavis would be out of town to avoid any inconvenience to them as there would be considerable noise and trucks blocking their access to the property. When it was announced that Dr. & Mrs. McDavis would be going to leave by mid-February, we decided to postpone the work until their residency ended. Since we were unsure if Ohio planned for anyone else to reside in the residence, we tried to get the removal done immediately which we did.

While I did not invite the Emerald Ash Borers or White Tail deer onto my property, I must mitigate the risk and repair any damage that resulted from their presence.

Throughout this 2 ½ year period, I have attempted to be accommodating to Dr. & Mrs. McDavis and respect their privacy. We didn't always wait for a request to mow, fertilize, salt the driveway etc. but did respond when requested and feel that our proactive maintenance was noticed and appreciated, please see the email from Deborah McDavis dated January 6, 2017.

It is my hope and expectation that after reviewing all the information provided, the invoices in question will be acceptable and a prompt payment will follow. Since we are only two months from the termination of the "lease" which we both regret having ever entered into, it is my hope that we can try to continue looking forward to restore a relationship that was in existence previously.

Sincerely,

John Wharton

**From:** accm.kmbs@gmail.com [mailto:accm.kmbs@gmail.com]

**Sent:** Monday, April 17, 2017 5:33 AM

**To:** jwharton@ohio-realty.com

**Subject:** Message from OR\_bizhubC280

**First Time Invoiced to The University**

| Wharton      |            | Invoice or Work Order |          |                  | Invoice or Work Order Description   |
|--------------|------------|-----------------------|----------|------------------|---|
| Invoice Date | Invoice No | Date                  | Number   | Amount           |   |
| 4/28/2015    | 31         | 4/14/2015             | 13031784 | \$ 174.14        | Turfbuilder Crabgrass 7 bags  |
| 4/28/2015    | 31         | 4/14/2015             | 1010     | \$ 75.00         | Lawn care; mowing, weedeating, raking, picking up trash and general landscaping |
|              |            |                       |          | <u>\$ 249.14</u> |   |

**Second Time Invoiced to The University**

| Wharton      |            | Invoice or Work Order |          |                  | Invoice or Work Order Description  |
|--------------|------------|-----------------------|----------|------------------|--|
| Invoice Date | Invoice No | Date                  | Number   | Amount           |  |
| 5/22/2015    | 32 & 321   | 4/14/2015             | 13031784 | \$ 174.14        | Turfbuilder Crabgrass 7 bags   |
| 5/22/2015    | 32 & 321   | 4/14/2015             | 1012     | \$ 75.00         | Lawn care: mowing, weedeating, raking, picking up trash and general landscaping. Note: 2 in the 1012 work order was handwritten. |
|              |            |                       |          | <u>\$ 249.14</u> |  |

**Unrelated Expenditures Included on the Invoices Submitted to Ohio University:**

| Wharton      |            | Invoice or Work Order |                       |                  | Comments   |
|--------------|------------|-----------------------|-----------------------|------------------|--|
| Invoice Date | Invoice No | Date                  | Number                | Amount           |  |
| 11/25/2015   | 328        | 11/19/2015            | 2474                  | \$ 82.50         | The University was charged for a City of Athens code inspection required of those who own rental properties. The University was not the landlord and should not have paid for this inspection.   |
| 11/25/2015   | 328        | 11/19/2015            | UOCH Internal Invoice | \$ 52.43         | No evidence was found showing the purchase of smoke detectors and carbon monoxide testers were associated with a corresponding work order.   |
| 11/25/2015   | 328        | 11/29/2015            | 62560                 | \$ 179.44        | No evidence was found showing the purchase of smoke detectors and carbon monoxide testers were associated with a corresponding work order.   |
| 1/26/2016    | 330        | 12/22/2015            | 101119                | \$ 6.06          | Expense occurred after work was finished at 31 Coventry Lane on that date. No evidence found to support this purchase was related to 31 Coventry Lane.   |
| 3/25/2016    | 331        | 3/1/2016              | 3753                  | \$ 15.00         | Work order listed times for employee as working 8-8:30 am and again 8:00 am -2:30 pm on the same date resulting in a 1/2 hour overlap  |
| 3/25/2016    | 331        | 3/1/2016              | 6843445               | 22.90            | Receipt contains handwritten notation "Paint for 31 Coventry." The University was invoiced for the costs associated with the paint of \$16.04 plus \$22.90 for turf tire repair. The invoice did not indicate the turf tire repair was associated with 31 Coventry Lane. |
| 5/30/2017    | 344        | 4/30/2017             | 47186                 | 11.20            | Documentation reflected that Wharton had excluded the charge for mowing his current residence from the invoice total. However, the associated sales tax for the mowing at Wharton's current residence was billed to the University.                                      |
|              |            |                       |                       | <u>\$ 369.53</u> |  |

# Greenleaf Landscapes, Inc

414 Muskingum Drive - Marietta, Ohio 45750  
Phone: (740) 373-1639 or (740) 589-5000  
Fax: (740) 373-1135  
E-Mail: info@greenleaflandscapes.com  
Web Page: www.greenleaflandscapes.com

## INVOICE

**Contracting**  
WV-010078

INVOICE NUMBER: **46924-28-5**

INVOICE DATE: **May 17, 2017**

PAGE: **1**

CUST. ID: **WHARTON J**

P.O. NUMBER:

SOLD TO: **JOHN & JOYCE WHARTON**



TERMS—DUE UPON RECEIPT:

| DESCRIPTION   | UNIT | PRICE  | NET      |
|---|------|--------|----------|
| <b>MOWING 31 COVENTRY LANE</b><br>5/4/17, 5/9/17, 5/15/17, 5/22/17, 5/29/17, 6/5/17,<br>6/12/17, 6/19/17, 6/26/17 | 9.00 | 140.00 | 1,260.00 |
| <b>IRRIGATION START UP</b>  |      |        | 150.00   |

# 6601



Thank You!

*Harriet Long*

|           |
|-----------|
| SUBTOTAL  |
| TAX       |
| PAYMENT   |
| TOTAL DUE |

1,410.00  
98.70  
1,508.70  
0.00  
**1,508.70**

LIMITED WARRANTY: Greenleaf Landscapes Inc. warrants trees, shrubs and evergreens for one year from date of job completion. 100% of the purchase price (plants to be replaced once at no additional cost.) Guarantee does not include annuals, perennials, irises, roses, dogwoods or bulbs. We are not responsible for acts of God such as wind, hail, extreme drought or extreme temperatures, pet or pest damage, diseases, etc. This guarantee is contingent upon proper watering and care as specified by Greenleaf Landscapes, Inc. at time of planting. A finance charge of 1.5% (18% on past due accounts).

**Payments Issued with No or Minimal Supporting Documentation:**

| <b>Invoice Date</b> | <b>Wharton Invoice No</b> | <b>Date</b> | <b>Invoice or Work Order Number</b> | <b>Amount</b>      | <b>Comments</b>  |
|---------------------|---------------------------|-------------|-------------------------------------|--------------------|--|
| 12/27/2016          | 341                       | 12/2/2016   | None                                | \$ 2,056.58        | Documentation includes an invoice with a past due amount. No supporting detail was provided for the University to verify what services were provided and at what location. |
| 1/31/2017           | 342                       | 1/5/2017    | 5380                                | \$ 8.00            | No documentation provided to support the amount invoiced.  |
| 1/31/2017           | 342                       | 1/6/2017    | 5404                                | \$ 10.00           | No documentation provided to support the amount invoiced.  |
| 1/31/2017           | 342                       | 1/30/2017   | 5537                                | \$ 8.00            | No documentation provided to support the amount invoiced.  |
| 4/26/2017           | 343                       | 3/30/2017   | 6558                                | \$ 40.00           | No documentation provided to support the amount invoiced.  |
|                     |                           |             |                                     | <u>\$ 2,122.58</u> |  |

**Amounts Reflected on Work Orders Excluded from Invoices Submitted to Ohio University:**

| <b>Invoice Date</b> | <b>Invoice No</b> | <b>Work Order No</b> | <b>Billing Errors (under)/over</b> | <b>Comments</b>  |
|---------------------|-------------------|----------------------|------------------------------------|--|
| 7/28/2015           | 324               | 2523                 | \$ (142.50)                        | This amount was reflected on the individual line items but excluded from the work order total reflected on the invoice paid by the University. |
| 11/25/2015          | 328               | 2451                 | 2.00                               | Work Order showed 1/4 hour worked. Minimum charge believed by Wharton to be \$15; however \$17 was billed.                                     |
| 5/30/2017           | 344               | 6701                 | (15.00)                            | Work order reflected 18.5 hours worked, but only 18 hours billed for a shortage of 1/2 hour or \$15.   |
|                     |                   |                      | <u>\$ (155.50)</u>                 |  |

**From:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** FW: Ohio University & Ohio Realty  
**Date:** Wednesday, February 10, 2016 10:37:37 AM  
**Importance:** High

---

[REDACTED]

I have received the following communication from a journalist at the Athens News. He may be reached at the following address:

Mr. Conor Morris  
General Assignment Writer  
The Athens News  
14 North Court Street  
P.O. Box 543  
Athens, OH 45701

The source for this address is:

<http://www.athensnews.com/site/contact.html>

[REDACTED]

[REDACTED]

**From:** conor@athensnews.com [mailto:conor@athensnews.com]  
**Sent:** Tuesday, February 09, 2016 12:44 PM  
**To:** [REDACTED]  
**Subject:** FW: Ohio University & Ohio Realty  
**Importance:** High

[REDACTED]

FYI - see message below we received recently. I also had a usually reliable source reach out to me (just yesterday) and tell me to check into the exact same allegations mentioned below. The source told me it's a long-standing practice at Ohio University to have a single "pet" real estate agency to coordinate sale of homes to all new Athletics Department hires.

I cannot verify the identity of the individual below, but the source I talked to is legitimate (a long-time community member).

Thanks. Let me know if you have any questions.

Conor

## Exhibit 6

Page 2 of 2

-----Original Message-----

From: [david@athensnews.com](mailto:david@athensnews.com)  
Sent: Tuesday, February 9, 2016 9:22am  
To: [conor@athensnews.com](mailto:conor@athensnews.com), [news@athensnews.com](mailto:news@athensnews.com)  
Subject: FW: Ohio University & Ohio Realty

-----Original Message-----

From: "Whistle Blower" <[ohiouniversityhelp@gmail.com](mailto:ohiouniversityhelp@gmail.com)>  
Sent: Tuesday, February 9, 2016 9:04am  
To: [David@athensnews.com](mailto:David@athensnews.com)  
Subject: Ohio University & Ohio Realty

Dear David,

I would like to remain anonymous and my name isn't real as you may have already figured out. I appreciate the effort you guys are putting in exposing the illegitimate deals allegedly happening between some OU administrators and Mr. John Wharton of Ohio Realty. Here is some information for you, if you check on how many new hires from outside Athens came to OU athletics department in past 5 or more years and how many of them used Ohio Realty or Mr. Wharton to buy their homes, you will be able to see a pattern. Don't be surprised if it is 100%. I was told that the new employees are specifically told to use Mr. Wharton's real estate firm. You may pass this information to Inspector general's office as it could help with their investigation or do the investigation yourself.  
Regards.

WhistleBlower

*- The information contained in this email and any attachments to this email may be privileged and confidential information and are intended solely for the use of the individuals or entities named as addressees. If you are not the intended recipient or the employee, agent, or service-provider responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, or copying of this message and/or attachments is strictly prohibited. If you have received this communication in error, please immediately notify the sender -*

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made effective as of the 15th day of August, (the "Lease Date") between The Beta Chapter of Delta Tau Delta House Association company, referred to as the "Landlord" throughout this Lease, and The Ohio University, referred to as the "Tenant" throughout this Lease. In consideration of the rent to be paid and the promises and obligations of Landlord and Tenant under this Lease, it is agreed as follows:

**ARTICLE 1 - LEASE OF PREMISES.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the building commonly known as "The Beta Chapter of Delta Tau Delta House Association Building" located at 4 University Terrace, Athens, Ohio. Property is shown on the site plan that is attached as "Exhibit A" and incorporated herein as a part of this Lease. The Beta Chapter of Delta Tau Delta House Association Building leased to Tenant is described as approximately 13,448 square foot two to three story brick building that includes full finished basement area. The 2764 square foot first level or bottom level of the building consists of a shower/restroom, laundry, utility room, living area, locker area, storage area and three dormitory style rooms. The 3,172 square foot second level of the building consists of a kitchen, pantry, dining area, theater room, walk in cooler/freezer and bathroom. The 4,748 square foot third level or main level of the building consists of a foyer, living room, library, restroom, locker/shower area, storage area, office area, seven dormitory style rooms and one apartment style unit with living room, kitchen/dining area, bathroom and one bed room. The 2,764 square foot fourth level of the building consists of a shower/restroom/locker room, and nine dormitory style rooms. There is an elevator that goes to all four levels. All four levels have a sprinkler system. The building has an occupancy permit of 38, according to the city equates to a total of nineteen dorm rooms and one apartment unit. The Beta Chapter of Delta Tau Delta House Association Building shall be referred to specifically as the "Premises" throughout this Lease. The Premises is further described on "Exhibit A", attached hereto and incorporated herein as a part of this Lease.

**ARTICLE 2 – TERM.** Landlord and Tenant agree to a term as follows:

Section 2.1. Term and Commencement Date. The "Term" of this Lease shall be for a term of one (1) year, beginning on the "Commencement Date". The Commencement Date will be August 15, 2015.

Section 2.2. Holding Over. If Tenant holds possession of the Premises or any portion thereof after the end of the Term, Tenant will be deemed a tenant from month to month based upon the terms of this Lease at expiration. Such tenancy may be terminated by either party upon not less than thirty (30) days prior written notice to the other.

Section 2.3. Entry Prior To Term. Prior to the Commencement Date, Tenant is authorized for Entry Prior to Term, early entry is granted beginning July 1, 2015. Tenant will be permitted to enter the premises in order to make necessary improvements for incoming students. Tenant shall contact Owner or Owners designee for approval of intended improvements. Tenant will also utilize this period to monitor potential humidity issues that were observed during an earlier walk through. Tenant will not be responsible for lease payments until the Commencement Date on August 15, 2015.

**ARTICLE 3 - RENEWAL OPTIONS.** The initial Term provided for in Section 2.1 shall sometimes be referred to as the "Initial Term" to distinguish it from the Renewal Terms provided for in this Article 3.

Section 3.1. Renewal Option. Tenant will have an option (each a "Renewal Option") to extend the Term for additional periods of one (1) year (each a "Renewal Term"). The first Renewal Term will commence upon the expiration of the Initial Term. Each successive Renewal Term will commence upon the expiration of the previously exercised Renewal Term. Tenant will exercise this option within 60 days of the expiration date.

Section 8.1. Landlord's Repairs. Landlord will maintain and make all repairs: (i) to the exterior, roof, roof drains, gutters and downspouts, elevator, fire alarm system and structural portions of the building, including the floor slab, bearing walls, elevator and foundations; (ii) to all systems, including electrical, gas, mechanical, plumbing, sprinkler, water and sewer, up to the point of entry into or hook-up with the Premises. Landlord, in order to perform inspections and to make such repairs, shall have the right to enter the Premises after giving reasonable notice to Tenant, unless an emergency situation occurs.

Section 8.2. Tenant's Repairs. Except for reasonable wear and tear and repairs required of Landlord pursuant to this Article, Tenant will repair and maintain the Premises in good order and condition. Tenant will maintain and make all repairs to (i) the interior of the Premises.

Section 8.3. Joint Repairs. In the event that there is a dispute between landlord and tenant concerning the nature and responsibility of the any repairs, the parties agree to notify each other and attempt to resolve the dispute, which may include the opportunity to jointly share in the repair of the premises if the situation warrants such an event.

Section 8.3. Storage of Documents. Tenant agrees to store Landlord's manuals, documents, specs and all other paperwork needed for information concerning repairs to any of the electrical, mechanical, plumbing, water, sewer, HVAC systems and all other components of the Property in a safe, confidential part of the Premises. All this information is needed in order to make any repairs to the Property and/or the Premises from time to time. Landlord shall prepare an inventory of all such manuals and documents for review by Tenant, and Tenant shall then be responsible for the safe keeping of all such manuals and documents.

Section 8.4. Pre-possession repairs and requirements: Landlord shall complete the following repairs and maintenance before Tenant assumes possession, Tenant's designee will approve the repairs and maintenance before possession:

- Entire interior property including dormitory rooms, apartment, hallways, laundry rooms, locker rooms, dining area, theater room, living rooms and office area shall be painted with Tenant approved colors and to Tenants specifications.
- Entire interior of property will receive a detailed and professional cleaning per the specifications of Tenant.
- With regard to previous above normal humidity readings, Landlord shall provide routine humidity inspections and provide evidence by a certified independent inspector that proper moisture level readings have been reached without the need for stand-alone mobile dehumidifier units. Landlord will perform required maintenance to ensure proper humidity levels, per Tenants specifications.

## ARTICLE 9 – ALTERATIONS. Tenant may make alterations as follows:

Section 9.1. Redecorations. Tenant may redecorate the interior of the Premises and make such alterations, changes and/or installations as Tenant may from time to time think are necessary or desirable, at tenant's expense; provided, however, that such alterations, changes and/or installations may not impair the electrical or mechanical systems serving the Premises or the structural soundness of the Premises or the Property.

Section 9.2. Network. Landlord acknowledges that the Premises must be and remain connected to Tenant's corporate terrestrial broadband data communications network (the "Network") in order for Tenant to conduct its business at the Premises. Landlord authorizes Tenant to perform such work as may be necessary, within or outside the Premises, to permit Tenant to properly connect the Premises to the Network and thereafter maintain such connection, all at Tenant's expense and in accordance with plans prepared by Tenant and approved by Landlord, which approval may not be unreasonably withheld, conditioned or delayed. Landlord agrees to cooperate fully with Tenant to secure the permits and approvals necessary to the performance of such work and to facilitate completion of such work.

materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, war or other reason beyond its control, then performance of such act or obligation will be excused for the period of the delay and the period for the performance of such act or obligation will be extended for a period equivalent to the period of the delay. The failure to make payments required under this Lease due to lack of funds will not, however, be considered a cause beyond the control of the party failing to pay.

Section 22.3. Litigation Between Parties. In the event of any litigation or other dispute resolution proceedings between Landlord and Tenant arising out of or in connection with this Lease, the prevailing party will be reimbursed for all reasonable costs, including, but not limited to, reasonable accountants' fees and attorneys' fees, incurred in connection with such proceedings (including, but not limited to, any appellate proceedings) or in connection with the enforcement of any judgment or award rendered in such proceedings. "Prevailing party" within the meaning of this Section 23.7 will include, without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

Section 22.4. Surrender. Tenant will peacefully and quietly surrender possession of the Premises to Landlord at the end of the Term. Tenant will have the right to remove all of its equipment, trade fixtures, decorations, inventory and other personal property from the Premises and will repair any damage done in the course of that removal. Any personal property remaining on the Premises 30 days following the expiration of the Term will be deemed abandoned and will become the property of Landlord.

Section 22.5. Entire Agreement. This written Lease, together with the exhibits hereto, contains all the representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Lease and the exhibits hereto. This Lease may be modified only by an agreement in writing signed by each of the parties.

Section 22.6. Governing Law. This Lease will be construed and interpreted in accordance with and be governed by the laws of Ohio wherein the Premises are located.

Section 22.7. Successors And Assigns. The provisions of this Lease will be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns, subject to the provisions of Article 12, herein.

Section 22.8. Zoning, Good Title And Environmental. Landlord represents and warrants to Tenant that all of the following are true as of the Lease Date and shall be true as of the Commencement Date;

- (a) Landlord is the fee owner of the Property and has full right and lawful authority to execute this Lease and perform the obligations of Landlord herein contained without the consent or joinder of any other party;
- (b) The Premises is not subject to any easement, restriction, zoning ordinance or similar private or governmental regulation which would prevent or restrict its use as permitted herein, that no such action is threatened or pending, and the Premises is presently zoned for the permitted use; and,
- (c) No underground storage tanks or related piping exist at the Property; the Property is in full compliance with all state and Federal environmental laws, rules, and regulations; and Landlord has received no notice of Hazardous Materials originating on or outside of the Property which affect the Property.
- (d) So long as Tenant is under contract with Landlord pursuant to this lease, Landlord shall not further encumber or otherwise cause a lien to be levied against the premises, nor shall the premises be used as collateral for any loan or other financial interest on behalf of the Landlord, its successors or assigns. Should the need arise for the Landlord to encumber the premises in anyway, Landlord shall give Tenant

adequate notice of such a plan or event. Tenant shall timely and adequately pay and keep the mortgage that is now in place encumbering the Premises current at all times. Should Landlord be place in a position of default or otherwise jeopardize Tenant’s tenancy in the Premises, Tenant shall have the right to intercede in any action to protect Tenant’s interest in the tenancy term and future renewal terms.

Section 22.9. Prevailing Wage. Tenant shall comply with all provisions of the Ohio Revised Code Chapter 4115 “Ages and Hours on Public Works” in the performance of any of its obligations hereunder for any work performed by or on behalf of Tenant. Landlord shall also comply with Ohio Revised Code and Prevailing Wage Laws when performing any work on the premises during the term of the Tenant’s occupancy, and including any work done from the date when Landlord knew that Tenant would be leasing the premises.

Section 22.10. Equal Employment. Pursuant to Ohio Revised Code 125.111, Tenant agrees that Tenant, its employees, agents or representatives will not discriminate by reason of race, creed, color, religion, sex, age, handicap, national origin, disability or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work under this lease. Tenant further agrees that tenant, its employees, agents or representatives shall not, in any manner, discriminate against, intimidate or retaliate against any employee hired for the performance of work under this Lease on account of race, creed, color, religion, sex, age, handicap, national origin, disability, or ancestry, gender preference or expression and identity.

Section 22.11. Campaign Contributions and Ethics Compliance. Tenant hereby certifies that all applicable parties listed in this Lease and are in compliance with Ohio’s limits on campaign contribution laws to state office holders, and tenant is in compliance with all Ohio Ethic Laws and Conflict of Interest Laws as they apply to state or other relevant contracts.

Section 22.12. Memorandum. Landlord and Tenant agree to sign a Memorandum of Lease in form attached as “Exhibit C”, which may be recorded by either party. The cost of such recording will be shared equally by Landlord and Tenant.

**ARTICLE 23 – RIGHT OF FIRST REFUSAL**. Landlord agrees to give Tenant a “Right of First Refusal” in form attached as “Exhibit D” this may be recorded by Tenant at Tenant’s expense.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

TENANT: The Ohio University

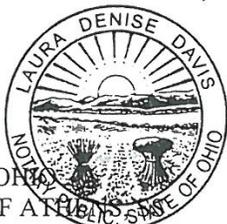
LANDLORD: The Beta Chapter of Delta Tau Delta House Association, LLC

By:   
Donna L. Goss  
Director of Real Estate Management

By: 

STATE OF OHIO  
COUNTY OF ATHENS, SS:

The foregoing Lease Agreement was signed and acknowledged before me by John Wharton and on behalf of The Beta Chapter of Delta Tau Delta House Association, LLC, an Ohio limited liability company, this 13<sup>th</sup> day of July, 2015.



LAURA DENISE DAVIS  
NOTARY PUBLIC  
STATE OF OHIO

Laura Denise Davis  
NOTARY PUBLIC

My Commission Expires  
June 9, 2020

STATE OF OHIO  
COUNTY OF ATHENS, SS:

The foregoing Lease Agreement was signed and acknowledged before me by Donna L. Goss, Director of Real Estate Management for Ohio University, on behalf of the Ohio University, this 4<sup>th</sup> day of June, 2015.

E. David Averion

NOTARY PUBLIC



E. DAVID AVERION  
Notary Public, State of Ohio  
My Commission Expires  
April 24, 2018

INVOICE 1 reference #31

John Wharton  
82 North Court Street  
Athens, Ohio 45701

Date-April 28, 2015

To: OU Office of President-31 Coventry

Comments:

|                |          |
|----------------|----------|
| UOCH wo 1274   | \$150.00 |
| UOCH wo 1273   | \$90.00  |
| UOCH wo 1272   | \$22.50  |
| UOCH wo 1271   | \$210.00 |
| UOCH wo 1010   | \$75.00  |
| UOCH wo 1010-1 | \$60.00  |
| Lowes 13821    | \$174.14 |

Total \$781.64

# Exhibit 8

Page 2 of 9

INVOICE 2 reference #321

John Wharton  
82 North Court Street  
Athens, Ohio 45701

Date-May 22, 2015

To: OU Office of President-31 Coventry

Comments:

|                      |          |
|----------------------|----------|
| UOCH wo 1012         | \$75.00  |
| Lowe's 13647         | \$195.74 |
| Lowe's 13821         | \$174.14 |
| UOCH wo 1010         | \$75.00  |
| Lowe's 01771         | \$164.83 |
| UOCH wo 1423         | \$480.00 |
| Lowe's 01768         | \$164.83 |
| Lowe's 01865         | \$164.83 |
| UOCH wo 1013         | \$67.50  |
| UOCH wo 1014         | \$435.00 |
| Economy supply 55248 | \$10.42  |
| UOCH wo 1015         | \$120.00 |
| UOCH wo 1016         | \$465.00 |
| Lowe's 14587         | \$219.78 |
| UOCH wo 1647         | \$195.00 |
| UOCH wo 1017         | \$690.00 |
| Lowe's 01886         | \$219.00 |
| Lowe's 01870         | \$219.78 |
| Economy supply 55432 | \$4.06   |

## Page 2 Invoice 2

|                             |           |           |
|-----------------------------|-----------|-----------|
| UOCH wo 1018                | \$645.00  |           |
| Lowes 01095                 | \$247.17  |           |
| Lowes 01768                 | \$219.78  |           |
| Lowes 14917                 | \$252.18  |           |
| Green leaf 29504            | \$171.16  |           |
| UOCH wo 1019                | \$390.00  |           |
| Lowes 14036                 | \$219.78  |           |
| Brian Nicholson pool 375945 | \$80.00   |           |
| DJ tree trimming 3441       | \$1391.00 |           |
| UOCH wo 1695                | \$45.00   |           |
| UOCH wo 1697                | \$90.00   |           |
| Bedrock rentals             | \$19.26   |           |
| Total                       |           | \$7911.02 |

# Exhibit 8

Page 4 of 9

INVOICE 3 reference #322

John Wharton  
82 North Court Street  
Athens, Ohio 45701

Date-June 1, 2015

To: OU Office of President-31 Coventry

Comments:

|                  |           |           |
|------------------|-----------|-----------|
| Green leaf 29504 | \$171.16  |           |
| UOCH wo 1700     | \$300.00  |           |
| Lowe's 13004     | \$85.25   |           |
| Green leaf 28766 | \$1048.40 |           |
| UOCH wo 1416     | \$210.00  |           |
| UOCH wo 1411     | \$30.00   |           |
| C&E 39354        | \$3.98    |           |
| Total            |           | \$1848.79 |

INVOICE 4 reference #323

John Wharton  
82 North Court Street  
Athens, Ohio 45701

Date-June 29, 2015

To: OU Office of President-31 Coventry

Comments:

|              |          |          |
|--------------|----------|----------|
| Travis Post- | \$100.00 |          |
| UOCH wo 1613 | \$255.00 |          |
| UOCH wo 1949 | \$120.00 |          |
| Lowe's 03850 | \$52.79  |          |
| UOCH wo 1953 | \$195.00 |          |
| Lowe's 1496  | \$32.96  |          |
| UOCH wo      | \$82.50  |          |
| <br>         |          |          |
| Total        |          | \$838.25 |

# Exhibit 8

Page 6 of 9

INVOICE 5 reference #324

John Wharton  
82 North Court Street  
Athens, Ohio 45701

Date-July 28, 2015

To: OU Office of President-31 Coventry

Comments:

|              |          |          |
|--------------|----------|----------|
| UOCH wo 1933 | \$45.00  |          |
| Lowes 02755  | \$24.20  |          |
| UOCH wo 2008 | \$232.50 |          |
| UOCH wo 2020 | \$60.00  |          |
| UOCH wo 2502 | \$105.00 |          |
| UOCH wo 2523 | \$480.00 |          |
| Total        |          | \$946.70 |

INVOICE 6 reference #325

John Wharton  
82 North Court Street  
Athens, Ohio 45701

Date-August 28, 2015

To: OU Office of President-31 Coventry

Comments:

|                  |          |           |
|------------------|----------|-----------|
| UOCH wo 2520     | \$210.00 |           |
| Lowe's 02842     | \$94.28  |           |
| C&E 66119        | \$4.61   |           |
| UOCH wo 2571     | \$60.00  |           |
| Green leaf 28779 | \$33.98  |           |
| UOCH wo 2577     | \$22.50  |           |
| UOCH wo 2573     | \$307.50 |           |
| Lowe's 13296     | \$68.50  |           |
| UOCH wo 2602     | \$82.50  |           |
| UOCH wo 1010     | \$97.50  |           |
| Lowe's 06678     | \$46.73  |           |
| UOCH wo2688      | \$15.00  |           |
| UOCH wo 2713     | \$225.00 |           |
| Lowe's 01760     | \$38.35  |           |
| Total            |          | \$1306.45 |

# Exhibit 8

Page 8 of 9

INVOICE 7 reference #326

John Wharton  
82 North Court Street  
Athens, Ohio 45701

Date-September 29, 2015

To: OU Office of President-31 Coventry

Comments:

|                      |           |           |
|----------------------|-----------|-----------|
| UOCH wo 2778         | \$210.00  |           |
| Lowes 13089          | \$110.80  |           |
| UOCH wo 2792         | \$15.00   |           |
| UOCH wo 2108         | \$60.00   |           |
| UOCH wo 2123         | \$112.50  |           |
| UOCH wo 2173         | \$225.00  |           |
| UOCH wo 2180         | \$15.00   |           |
| Green leaf 28784     | \$106.96  |           |
| UOCH wo 2212         | \$67.50   |           |
| Lowes 03165          | \$185.94  |           |
| Pool people 15410901 | \$2223.22 |           |
| Total                |           | \$3331.92 |

INVOICE 8 reference #328

John Wharton  
82 North Court Street  
Athens, Ohio 45701

Date-November 25, 2015

To: OU Office of President-31 Coventry

Comments:

|                      |          |           |
|----------------------|----------|-----------|
| Green leaf 43963     | \$214.00 |           |
| UOCH wo 2399         | \$330.00 |           |
| UOCH wo 2496         | \$195.00 |           |
| UOCH wo 2433         | \$15.00  |           |
| UOCH wo 2443         | \$442.50 |           |
| UOCH wo 2447         | \$172.50 |           |
| UOCH wo 2451         | \$17.00  |           |
| UOCH wo 2474         | \$82.50  |           |
| Fire ext             | \$52.43  |           |
| Economy supply 62560 | \$179.44 |           |
| C&E 91285            | \$106.86 |           |
| Total                |          | \$1807.23 |